elected directors could exercise the power.[21] The contention of counsel, however, that the act violated the federal Constitution, seems unsound, for the federal courts will not take jurisdiction to enforce a "republican form of government." [22] Nor do they seem to regard an improper delegation of the taxing power as a violation of the Fourteenth Amendment.[23]

RIGHT TO STRIKE TO UNIONIZE THE EMPLOYMENT. — Though labor unions logically constitute combinations in restraint of trade, the modern system of business organization renders them so essential to further the proper interests of workmen that they are no longer treated, in this country at least, as illegal.[1] Any attempt to enforce demands by striking, if it does not involve a breach of contract or is not accompanied by a tort against an employer, creates no liability in his favor,[2] regardless of motive.[3]

But a strike to coerce the employer into exercising his right to discharge a workman involves the further element of an interference with the workman's right to a free market for his labor. That the workman has this right is shown in the cases giving him an action where the strike involves a tort against the employer.[4] Moreover, when a fourth party is brought into the dispute, as in the case of a secondary boycott, the invasion of the right is usually held a tort, seldom if ever justified.[5] In every case, since the invasion of the workman's right by the right of the union member to quit work has injured the workman, it should be treated as a *primâ facie* tort, with the burden upon the union member to show that his right should prevail.[6]

Where, however, no fourth party is involved, the tort may often be justifiable. Thus a strike may be called without liability to procure the discharge of a fellow workman whose system of labor or incompetency prejudices [7] or endangers [8] the strikers. It is also within the limits of

Schultes *v.* Eberly, 82 Ala. 242, 2 So. 345. The effect of these authorities is weakened by special constitutional provisions in the respective states. But see Vallelly *v.* Board of Park Commissioners, 16 N. D. 25, 32, 111 N. W. 615, 618; State *v.* Mayor, etc. of Des Moines, 103 Ia. 76, 82, 72 N. W. 639, 641, and note the emphasis placed by the courts upon the fact that these boards were not elected by the people to be taxed.

[21] See Vallelly *v.* Board of Park Commissioners, *supra*.

[22] Pacific States Tel. & Tel. Co. *v.* Oregon, 223 U. S. 118, 32 Sup. Ct. 224.

[23] *Cf.* Soliah *v.* Heskin, 222 U. S. 522, 32 Sup. Ct. 103; Fallbrook Irrigation District *v.* Broadley, 164 U. S. 112, 17 Sup. Ct. 56.

[1] See 25 HARV. L. REV. 465.

[2] Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273; Gray *v.* Building Trades Council, 91 Minn. 171, 97 N. W. 663; Karges Furniture Co. *v.* Amalgamated, etc. Union, 165 Ind. 421, 75 N. E. 877. *Contra*, Mapstrick *v.* Ramge, 9 Neb. 390, 2 N. W. 739.

[3] See COOKE, COMBINATIONS, MONOPOLIES, AND LABOR UNIONS, 2 ed., § 59. But see 18 HARV. L. REV. 411, 418.

[4] *Cf.* Hamilton-Brown Shoe Co. *v.* Saxey, 131 Mo. 212, 32 S. W. 1106; Jonas Glass Co. *v.* Glass Bottle Blowers' Association, 72 N. J. Eq. 653, 66 Atl. 953.

[5] *Cf.* Crump *v.* Commonwealth, 84 Va. 927, 6 S. E. 620; Pickett *v.* Walsh, 192 Mass. 572, 78 N. E. 753.

[6] De Minico *v.* Craig, 207 Mass. 593, 94 N. E. 317. See 20 HARV. L. REV. 253, 262.

[7] Minasian *v.* Osborne, 210 Mass. 250, 96 N. E. 1036.

[8] See Berry *v.* Donovan, 188 Mass. 353, 357, 74 N. E. 603, 605; MARTIN, MODERN LAW OF LABOR UNIONS, §§ 36, 37.

justifiable competition to strike to obtain an employee's work by his discharge.[9] But a strike to enforce a debt owed by the workman to the union is not competition,[10] since in a fair sense no interest in regard to the employment is protected by his discharge. In a recent case the court refused to enjoin a union from striking to compel the discharge of workmen who refused to affiliate with the union. *Kemp* v. *Division No. 241, Amalgamated Association of Street and Electric Ry. Employes of America*, 255 Ill. 213, 99 N. E. 389. In such a case where the strike benefits primarily not the union members but the union itself it is regarded as unjustifiable in many jurisdictions.[11] But in the exigencies of modern business organization the union is an instrumentality in the workmen's hands, essential to make their competition effectual. Strengthening it, therefore, enlarges their power to secure such direct benefits as shorter hours and increased pay. Consequently a strike for unionization would seem justifiable. Three of the four majority justices in the principal case, however, base their decision upon the theory that the union has committed no tort and needs no justification, a view that has much support.[12]

The result in the principal case should not be affected by the fact that the aggrieved employees were ex-members of the union, who resigned because they disapproved of certain of its actions. It is true that unless a union admits all applicants fulfilling reasonable requirements for membership, it should not be allowed the excuse of unionization.[13] For it should not be heard to say that the strike is for unionization when the most effectual way to strengthen the union, enlargement of membership,[14] is rejected. But where the question is not wrongful refusal of membership, but wrongful expulsion, or resignation because of improper action, different considerations prevail. The wrongfully expelled member can compel reinstatement because of his right to share in the union funds.[15] All illegal practices of the union can be enjoined. If an ex-member stays outside merely by preference, he should have no more rights than any outsider. Even if the union's actions are reprehensible in nature, but without legal redress, the union's right to compel unionization should not fail. The justification should not depend upon the union's moral uprightness any more than the legality of a strike for higher wages depends upon the reasonableness of the rates asked.

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[9] Pickett *v.* Walsh, 192 Mass. 572, 78 N. E. 753.

[10] Giblan *v.* National, etc. Union, [1903] 2 K. B. 600. See 17 HARV. L. REV. 140.

[11] Lucke *v.* Clothing Cutters' Assembly, 77 Md. 396, 26 Atl. 505; Plant *v.* Woods, 176 Mass. 492, 57 N. E. 1011; Ruddy *v.* United Association of Journeymen Plumbers, 79 N. J. L. 467, 75 Atl. 742; Erdman *v.* Mitchell, 207 Pa. St. 79, 56 Atl. 327. But *cf.* Mayer *v.* Journeymen Stone Cutters' Association, 47 N. J. Eq. 519, 20 Atl. 492.

[12] Parkinson Co. *v.* Building Trades Council, 154 Cal. 581, 98 Pac. 1027; Cleonmitt *v.* Watson, 14 Ind. App. 38; National Protective Association *v.* Cumming, 170 N. Y. 315, 63 N. E. 369.

[13] The decisions in Lucke *v.* Clothing Cutters' Assembly, 77 Md. 396, 26 Atl. 505, and Quinn *v.* Leathem, [1901] A. C. 495, might be based on this ground.

[14] See 20 HARV. L. REV. 253, 347.

[15] Weiss *v.* Musical Mutual Protective Union, 189 Pa. St. 446, 42 Atl. 118; Meurer *v.* Detroit Musicians' Benevolent & Protective Association, 95 Mich. 451, 54 N. W. 954.